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7 ROGER E. GREER,
8 Plaintiff,
9 v.
10 CHRISTINE WORMUTH, et al.,
11 Defendants.

Case No. 24-cv-00614-MMC

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS; DISMISSING
FIRST AMENDED COMPLAINT
WITHOUT FURTHER LEAVE TO
AMEND; VACATING HEARING;
DIRECTIONS TO CLERK**

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13 Before the Court is defendants Department of the Army and Christine Wormuth's
14 Motion, filed July 8, 2024, "to Dismiss First Amended Complaint." Plaintiff Roger E.
15 Greer, who proceeds pro se, has not filed a response thereto.¹ Having read and
16 considered the moving papers, the Court deems the matter appropriate for determination
17 thereon, VACATES the hearing scheduled for August 23, 2024, and rules as follows.

18 Plaintiff's claims arise from defendants' June 2015 notice of termination of
19 plaintiff's employment with the Department of the Army and the subsequent termination,
20 which termination, plaintiff alleges, was on account of the results of a random drug test,
21 namely, positive tests for amphetamine and methamphetamine. By order filed May 22,
22 2024 ("May 22 Order"), the Court granted defendants' motion to dismiss the initial
23 Complaint for failure to state a claim. In so ruling, the Court found (1) plaintiff's Title VII
24 discrimination claim failed, as he did not allege any facts to support a finding that his
25 termination was on account of race, color, religion, sex, or national origin, (2) his

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¹ As the motion was filed on July 8, 2024, plaintiff's opposition or other response to
the motion was due no later than July 22, 2024. See Civil L.R. 7-3(a) (providing
"opposition must be filed and served not more than 14 days after the motion was filed").
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1 Rehabilitation Act claims for discrimination and for failure to accommodate failed, as he
2 did not allege facts to support a finding that he was disabled or, even if disabled, that he
3 qualified for a statutory safe harbor available to employees who are no longer engaged in
4 the illegal use of drugs, and (3) plaintiff's Title VII and Rehabilitation Act retaliation claims
5 failed, as he did not allege any facts to support a finding that he engaged in any protected
6 activity, let alone a causal link between any protected activity and the termination. The
7 Court granted plaintiff leave to amend and plaintiff subsequently filed a First Amended
8 Complaint ("FAC").

9 By the instant motion, defendants argue the FAC likewise is subject to dismissal
10 for failure to state a claim. As set forth below, the Court agrees.

11 First, with respect to plaintiff's Title VII discrimination claim, plaintiff has added no
12 factual allegations to support a finding that his employment was terminated on account of
13 "race, color, religion, sex, or national origin," see 42 U.S.C. § 2000e-16(a) (setting forth
14 federal military employees' right to be free from discrimination), and, accordingly, said
15 claim will be dismissed without further leave to amend.

16 Next, with respect to plaintiff's Rehabilitation Act discrimination and failure to
17 accommodate claims, plaintiff now asserts he "is not claiming that he is an actual
18 'disabled person,'" but, rather, that he was "regarded as" having a disabling impairment.
19 (See FAC, third attachment at 2.) Although a Rehabilitation Act claim may be brought by
20 an employee who is "regarded as" disabled, see Coons v. Secretary of U.S. Dep't of
21 Treasury, 383 F.3d 879, 884 (9th Cir. 2004), plaintiff fails to allege any facts to support a
22 finding that defendants regarded him as disabled, see Ashcroft v. Iqbal, 556 U.S. 662,
23 678 (2009) (holding "legal conclusions" not "supported by factual allegations" fail to state
24 cognizable claim). Further, even assuming defendants regarded plaintiff as disabled,
25 plaintiff's allegation that he tested positive for illegal drugs in April 2015 (see FAC at 2),
26 i.e., two months prior to the notice of termination, and the lack of any allegation that such
27 test result was in error, bars his Rehabilitation Act claims, see 29 U.S.C. § 705(20)(C)(i)
28 (providing "individual with a disability" does not include persons "currently engaged in the

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1 illegal use of drugs"); Collings v. Longview Fibre Co., 63 F.3d 828, 833 (9th Cir. 1995)
2 (holding "drug involvement during the weeks and months prior to [employee's] discharge"
3 barred claim). Accordingly, plaintiff's Rehabilitation Act termination and failure to
4 accommodate claims will be dismissed without further leave to amend.

5 Lastly, with respect to plaintiff's retaliation claims, plaintiff now alleges he filed an
6 "EEO complaint" in or around August 2014. (See FAC at 2.) Plaintiff fails to plead,
7 however, any facts to support a finding that a causal link exists between such filing and
8 the notice of termination issued ten months later. See Coons, 383 F.3d at 887 (holding
9 retaliation claim not cognizable in absence of showing "causal link" between "protected
10 activity" and "adverse employment action"); Clark County School Dist. v. Breeden, 532
11 U.S. 268, 273–74 (2001) (noting cases finding causal link based solely on timing of
12 protected activity and adverse employment action "uniformly hold that the temporal
13 proximity must be 'very close"'; citing with approval circuit court decisions holding three-
14 month and four-month intervals insufficient). Accordingly, plaintiffs' retaliation claims will
15 be dismissed without further leave to amend.

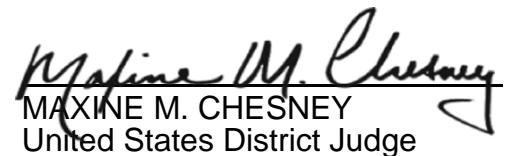
CONCLUSION

17 For the reasons stated above, defendants' motion to dismiss the FAC is hereby
18 GRANTED, and the First Amended Complaint is hereby DISMISSED without further
19 leave to amend.

20 The Clerk of Court is hereby DIRECTED to close the file.

21 **IT IS SO ORDERED.**

23 Dated: August 14, 2024


MAXINE M. CHESNEY
United States District Judge